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HUMAN RIGHTS COMMITTEE

Fifty-seventh session

SUMMARY RECORD OF THE 1502nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 8 July 1996, at 10.30 a.m.

Chairman: Mr. AGUILAR URBINA

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The meeting was called to order at 10.45 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fifty-seventh session of the Human Rights Committee.

STATEMENT BY THE HIGH COMMISSIONER FOR HUMAN RIGHTS

2. Mr. AYALA LASSO (High Commissioner for Human Rights) emphasized the importance he attached to the role of the Committee in the promotion and protection of human rights. Recent developments on the international scene had made it imperative to strengthen the monitoring of States' fulfilment of their obligations under the international human rights instruments, and in particular under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. By its nature, the protection thus provided was legal rather than political, arising as it did from a dialogue between independent bodies like the Human Rights Committee and States eager to achieve progress in that domain. As a systematic means of promoting the application of all human rights in all countries, such a mechanism was more likely to produce practical results than any other procedure. In his own daily work, the Committee's proceedings, and especially its comments and final recommendations, were an essential source of guidance, and their application was one of his abiding goals.

3. The United Nations was currently confronted by a grave financial crisis, whose impact on the activities of the Secretariat had not yet been fully assessed. In every department, posts had been frozen or eliminated; the adverse effects of the restriction of resources had been felt on many levels, including documentation. At the same time, the Centre for Human Rights was being restructured so as to improve its support for the various human rights mechanisms and procedures. Members should rest assured that due consideration was being given to the particular needs of each of the treaty bodies, the Human Rights Committee among them.

4. Various events of interest to the Committee had taken place since its previous session. The second United Nations Conference on Human Settlements (Habitat II) had been held at Istanbul from 3 to 14 June. The Assistant Secretary-General for Human Rights and he had attended that Conference and taken part in various discussions, with a view to highlighting the importance of the right to decent housing within the broader arena of human rights. Experts from both the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights had directly assisted in the drafting of texts. The Conference had recognized the vital nature of the right to decent housing in its Habitat Agenda: Goals and Principles, Commitments and Global Action Plan.

5. It would be recalled that the World Conference on Human Rights had acknowledged the critical importance of maintaining high standards in human rights legislation and had stressed the crucial role played by the human rights treaty bodies in that process. One of his priorities as High Commissioner was to ensure that those high standards were maintained. Two new draft instruments were currently being prepared: the first was the draft

minimum rules of the United Nations for the administration of criminal justice, which were being examined by the Commission on Crime Prevention and Criminal Justice. The second was the draft declaration of minimum humanitarian standards, under consideration by the Commission on Human Rights. He would welcome the comments and views of the Human Rights Committee on both those draft instruments and would forward them to the bodies concerned.

6. At its fifty-second session, the Commission on Human Rights had discussed various matters related to the treaty bodies. It had recommended, inter alia, that the next Meeting of Persons Chairing the Human Rights Treaty Bodies should be asked to consider whether States should submit a single global report to all the treaty bodies, and whether periodic reports should be replaced by reports covering specific themes. The Commission had also invited the treaty bodies to consider the matter of the provision of technical support and advisory assistance to States parties so as to assist them in fulfilling their treaty obligations.

7. The Committee against Torture was devoting an increasing portion of its time to the consideration of communications from individuals and to efforts related to the inquiry procedure established under article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. That Committee had published the results of its confidential inquiry on Egypt, copies of which could be obtained from the secretariat. By enabling it to conduct inquiries into allegations of the systematic practice of torture, article 20 provided the Committee against Torture with an avenue which was not open to other treaty bodies, and which constituted a fundamental step forward in the domain of human rights.

8. The Committee on Economic, Social and Cultural Rights had held a general discussion on the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, which it planned to adopt at its next session for transmittal to the Commission on Human Rights. The optional protocol would allow individuals, under certain conditions, to submit complaints that their rights under the Covenant had been violated. That Committee had adopted the Human Rights Committee's practice of holding a meeting with the specialized agencies in connection with the meetings of the pre-sessional working group for the purpose of gathering information concerning the reports to be examined, and had decided to expand that practice by holding a similar meeting with NGOs.

9. The Committee on the Rights of the Child had started formulating guidelines for the submission of periodic reports.

10. Lastly, he assured the Committee that he would assist it in any way possible.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CCPR/C/112)

11. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

12. The CHAIRMAN invited the Committee to consider the proposed programme of work, which was before it in an informal document. The officer in charge of documentation would attend the Committee during the session to discuss the impact of the financial crisis on the translation and production of reports and other documentation.

13. The proposed programme of work was adopted, subject to certain modifications.

14. Ms. EVATT, Chairman/Rapporteur of the Working Group on Article 40, said that the Group, composed of Mr. Aguilar Urbina, Mr. Francis, Mr. Kretzmer and herself, had, during the previous week, held a meeting with representatives of the International Labour Office (ILO), the office of the United Nations High Commissioner for Refugees (UNHCR), the World Health Organization (WHO) and a group concerned with the problem of AIDS. Those bodies had submitted information relevant to the reports of States parties scheduled for consideration during the current session. The Group had subsequently taken that information into consideration in the formulation of its lists of issues.

15. The Group had added a number of follow-up questions to the list of issues concerning the initial report of Nigeria, which had been drawn up at the previous session. It had formulated a list of issues concerning the initial report of Brazil, according to the new methcd adopted by the Committee at the previous session, namely, that the lists of issues should be divided into two parts, containing issues of greater and lesser importance. It had restructured the list of issues concerning the third periodic report of Peru, also formulated at the previous session, in accordance with the new method. Switzerland had requested postponement of the consideration of its initial report, scheduled to take place at the current session.

16. The Group had met with various NGOs to consider ways and means of bringing about more efficient cooperation between them and the Committee. A report of matters discussed at that meeting would be made available to the members of the Committee during the current session. She wished to draw particular attention to a brief from Equality Now and to a report on Afghanistan, which indicated that action taken by the Committee during the previous year had brought about real improvements in the situation of women in that country.

The meeting was suspended at 11.15 a.m. and resumed at 11.25 a.m.

17. Mr. POCAR, Chairman/Rapporteur of the Working Group on Communications, said that the Group, comprising Mr. Bhagwati, Mr. Bruni Celli, Mr. Bán, Mr. Prado Vallejo and himself, had been joined for several of its six meetings by Ms. Evatt, Mr. Kretzmer and the Chairman of the Committee. The Group had adopted a total of 15 recommendations. Seven were for adopting views under article 5 (4) of the Optional Protocol, two for declaring communications inadmissible and six for declaring communications admissible.

18. For lack of time, the Working Group had been unable to consider a further five drafts (four draft views and one draft inadmissibility decision) prepared by the Secretariat. He requested that it be granted time, as soon as possible, to finalize those drafts for the plenary.

19. The CHAIRMAN said that if the Committee expedited the business scheduled for the following meeting, it should be possible to grant that request.

20. Mr. LALLAH expressed the hope that during the next few days the Committee would also be able to finalize its General Comment on article 25 of the Covenant and thereby maintain the tradition of including one such General Comment in each of its annual reports; he further urged that time be made available for discussion of a formal reaction to what he considered to be the extraordinary proposal that separate periodic reports to the various treaty bodies be replaced by global reports.

21. The CHAIRMAN agreed that time should also be found in the Committee's schedule for consideration of those important issues.

List of issues to be taken up in connection with the consideration of the initial periodic report of Brazil (CCPR/C/81/Add.6)

22. Ms. EVATT, Chairman/Rapporteur of the Working Group on Article 40, pointed out that in preparing its recommendations, the Group had been guided by the Committee's decision at its fifty-sixth session to divide the "lists of issues" concerning periodic reports into two parts, the first of which would single out those issues deemed to be most important. Brief headings to each part of the list were intended to facilitate reference and identify areas of specific interest to the Committee. The Working Group hoped that the new presentation would ensure that the Committee spent most of its time on the most serious issues, which had not always been the case in the past.

23. Lord COLVILLE said that while he had no quarrel with the draft list of issues before the Committee, one important matter did not appear to receive the attention it deserved, namely Brazil's federal structure and the consequently high degree of independence enjoyed by the component States. That independence extended into the legal domain, a fact which could make it extremely difficult to determine responsibilities, for example in the matter of impunity, the subject of the first question in part I. What appeared to be a great deal of variety in process and procedure from one State to another was a very proper subject for the Committee's concern.

24. The CHAIRMAN remarked that federal responsibility was the subject of part II, question (e), which should perhaps be moved to a more prominent position in the list of issues.

25. Mrs. CHANET voiced appreciation of the Working Group's efforts to respond to the Committee's decision concerning the presentation of lists of issues. She had, however, noted with some dismay that virtually no direct linkage was established between the issues identified and specific articles of the Covenant: monitoring of observance was, after all, central to the Committee's mandate. She was also disturbed at the absence of questions designed to illuminate the complexities of the federal structure, especially since the

Committee would be examining Brazil's initial report and would have a great deal to learn. To her mind, the Committee should begin by inquiring about Brazil's constitutional framework, the place occupied in it by the Covenant and the functioning of its institutions, notably those responsible for upholding the rule of law and ensuring the promotion and protection of human rights.

26. Mr. KLEIN commended the efforts of the Working Group, but shared the doubts expressed concerning the difficulty of determining where responsibilities actually lay in federal structures; the Committee should give due consideration to that issue. He very much favoured transferring the key question of the independence of the judiciary to part I of the list of issues.

27. Mr. BÁN observed that the central authority's limited power to address human rights issues, because of the federal structure of the State, was brought out on more than one occasion in the Brazilian report itself. The Committee would do well to look closely at any constitutional measures that had already been enacted or were envisaged to make good that deficiency and facilitate the implementation of the Covenant. Such matters should definitely figure in part I of the list of issues.

28. Ms. EVATT, Chairman/Rapporteur of the Working Group on Article 40, said that the Group had discussed the question of federal responsibility, and had taken account of the provision in the Federal Constitution for intervention by the Brazilian Government in defence of human rights. She personally saw nothing invidious in placing the questions on federal responsibility or the independence of the judiciary in part II of the list of issues, but would not object to their transfer to part I. The questions in part I virtually all stemmed from matters mentioned in the Brazilian report itself - matters that could therefore be considered as germane to that country's understanding of its responsibilities under the Covenant. If the Committee so desired some form of cross-referencing to specific articles of the Covenant might be devised.

29. The CHAIRMAN said he took it to be the feeling of the Committee that questions (e), (f), and (g) should all be transferred to part I of the list of issues. Some modification of the wording might also be in order, especially where question (f) was concerned.

30. Mr. EL SHAFEI submitted that the status of the Covenant within the Brazilian domestic legal order should be the very first of the Committee's concerns. An appropriately-worded question should therefore be placed at the head of the list of issues.

31. Mr. PRADO VALLEJO said that the list of issues would be better organized if parts I and II were reversed and that questions on freedom of conscience and the situation of the family should be added to the list.

32. Mr. ANDO said that in certain irregular cases, such as the situation in Nigeria, the Committee might decide to request a specific report on a contemporary issue of particular urgency. However, in general it should remember that it was the monitoring body for the Covenant. At least in the

case of initial reports, the Covenant's structure ought to be kept in mind, although subsequent reports might concentrate on specific issues. If the list of issues was divided into two parts, the first part should provide a general framework for all subsequent questions. In conclusion, he suggested that in part II of the Brazilian list, paragraphs (e) and (f) should be combined.

33. Mr. BRUNI CELLI noted that paragraph 7 of the core document for Brazil (HRI/CORE/1/Add.53) gave statistics on the percentage of the Brazilian population who lacked access to basic social services. He felt that the Committee, under article 6 of the Optional Protocol to the Covenant, should ask the Brazilian delegation what it was doing to correct that situation.

34. The CHAIRMAN asked Mr. Bruni Celli to submit a concrete proposal for a new question to be added to the list of issues.

35. Mr. KRETZMER said he agreed that the question of federal responsibility should be the Committee's primary concern. However, he did not support Mr. Prado Vallejo's suggestion that parts I and II of the list of issues should be reversed. With regard to the status of the Covenant, in the light of the great disparity between the law and reality in Brazil, it would be a great mistake for the Committee to begin with procedural issues. It would be useless for the Brazilian delegation to make a lengthy presentation on the status of the Covenant in that country which might have no relationship to the actual situation of individuals there. He also agreed that the list of issues should include references to specific articles of the Covenant.

36. Mrs. CHANET noted that the list of issues did not include any reference to states of emergency, although according to the periodic report Brazilian law included complicated provisions for states of defence and states of siege (CCPR/C/81/Add.6, para. 62 ff.). She wondered whether the Working Group had deliberately omitted such a question because it felt that the periodic report provided sufficient information on the matter. She agreed with Mr. Prado Vallejo that the list of issues should include questions on freedom of conscience and enforced disappearances and that torture should be considered from points of view other than that of impunity.

37. The CHAIRMAN asked Mrs. Chanet to prepare a question on states of emergency to be added to the list of issues.

38. Mr. BHAGWATI said that he agreed that part II, paragraphs (e)-(g), should be moved to part I. Paragraph (g) need not be the first paragraph of part I, but it should be the basis for determining whether the Covenant was being implemented. The status of the Covenant and the independence of the judiciary should also be included in part I. However, he wondered why part I was considered more important than part II, which included issues such as gender equality and freedom of speech; neither part should be considered more important than the other. He agreed with Mrs. Chanet that the list of issues should include states of emergency and suspension of rights in such situations.

39. Ms. EVATT said that the Working Group had not placed headings on the two parts of the list of issues because it had been unable to determine

whether one part of the Covenant was more important than the other. Instead, it had grouped together in part I the questions which it expected the Committee to discuss at greatest length.

40. Mr. FRANCIS said that, in his view, the placement of certain questions in part I reflected the extent of violations by the State party rather than the importance of the issues themselves.

41. Ms. MEDINA QUIROGA said that she supported the position of Mr. Kretzmer. Since the status of the Covenant was dealt with on the first page of the periodic report of Brazil, she saw no reason for its inclusion in the list of issues; if, however, it must be included, it should not be placed in part I.

42. The CHAIRMAN said he agreed with Mr. Kretzmer and Ms. Medina Quiroga. The status of the Covenant was already dealt with in the report; moreover, as the Working Group had concluded, the difference between law and practice in Brazil was so great that the Committee's primary concern should be the study of existing violations.

43. Mr. BUERGENTHAL said he agreed that part II, paragraph (f), should not be moved to part I.

44. Mr. BRUNI CELLI said that he agreed with Ms. Medina Quiroga, Mr. Kretzmer and the Chairman. Moreover, paragraph 42 of the core document explained the relationship between the Covenant and domestic law. However, the end of paragraph 42 stated that international legal instruments, once signed by Brazil and sanctioned by the President of the Republic, could be invoked and directly applied by the courts and competent authorities. He felt that it would be useful to request specific examples of cases where that had occurred.

45. The CHAIRMAN said that the question seemed to be whether the second half of part II, paragraph (f), should be left in its current position or moved to part I.

46. Mrs. CHANET said that she had come round to the view that there was no reason to discuss the theoretical role of the Covenant. Part II, paragraph (f), could be retitled, the first part could be deleted, and the paragraph, which would begin with the words "Please indicate ..." could simply request information on the implementation of the provisions of the Covenant under domestic law.

47. The CHAIRMAN said he took it that there was a consensus that the paragraph, as amended, should remain in part II of the list of issues.

48. Ms. EVATT said she assumed that part II, paragraph (e), would be moved to part I, since it dealt with the federal Government's responsibility to ensure implementation of the Covenant; it might be useful to add a reference to article 2 of the Covenant.

49. Mrs. CHANET suggested that reference should also be made to article 50 of the Covenant.

50. Ms. MEDINA QUIROGA, speaking with regard to part II, paragraph (b), of the list of issues, noted that the periodic report listed as a success the fact that the Supreme Court had eliminated "legitimate defence of [one's] honour" as a defence in cases of men accused of crimes of passion (CCPR/C/81/Add.6, para. 57). However, she had received information to the effect that that ruling had not been translated into action at the lower levels. She suggested that a question should be added to the list of issues requesting information on the current situation in practice with regard to men who murdered their wives.

51. The CHAIRMAN said that that question would be incorporated into part II, paragraph (b).

52. He invited the Committee to proceed to the adoption of the list of issues as amended in the course of the discussion.

53. Part I, paragraphs (a)-(h) (arts. 6, 7, 8, 10, 12, 24, 26 and 27), were adopted.

54. Part II, paragraphs (e) and (g), were adopted for inclusion in part I.

55. Part II, paragraphs (a)-(d), (f) and (h), were adopted.

56. The CHAIRMAN noted that it had been proposed that questions regarding freedom of conscience and the proclamation of states of emergency should be added to part I.

57. Mr. PRADO VALLEJO suggested that the Chairman of the Working Group should be asked to draft the question regarding freedom of conscience.

58. Mrs. CHANET said that the Brazilian delegation should be asked to provide information on the conditions warranting the proclamation of a state of emergency or state of siege, referred to in articles 111 to 116 of the report, and their compatibility with the provisions of article 4 (1) of the Covenant. It should also be asked to explain whether the ensuing derogations from constitutional rights were compatible with the provisions of article 4 (2).

59. The CHAIRMAN requested the members of the Working Group to provide texts of the proposed additional questions for consideration by the Committee at the next meeting.

List of issues to be taken up in connection with the consideration of the third periodic report of Peru (CCPR/C/83/Add.1)

60. Ms. EVATT, Chairman/Rapporteur of the Working Group on Article 40, said that the Group had tried to divide the list into two parts, with those issues that would need the most time for discussion in the first part and those that remained in the second. It had had some difficulty in devising headings for the two sections, deciding in the end to use "Major issues" for part I and "Other issues" for part II. She felt that it would probably be better to omit both "Major" and "Other". The final list recommended by the Working Group was substantially the same as that prepared at the fifty-sixth session.

Part I: Issues relating to the implementation of articles 4, 6, 7, 9, 10, 14 and 27 of the Covenant

61. Ms. MEDINA QUIROGA pointed out in regard to paragraph (d) that the measure adopted on 28 June 1995 precluding the judiciary from challenging the validity of the amnesty was Act No. 26492 and not a decree. In regard to paragraph (h), she noted that a Council of Judicial Coordination with wide powers to reorganize the judiciary had recently been established in Peru. The delegation should be asked to describe that body's powers. The paragraph should also include a question about the competence of military courts to try civilians.

62. Mr. PRADO VALLEJO asked whether the reference to "faceless judges" in the second sentence of paragraph (h) was to be retained.

63. Mr. BUERGENTHAL said that, at the end of the paragraph (h), the Committee should ask whether the procedures described were compatible with the provisions of article 14 of the Covenant.

64. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the amendment to paragraph (d) and the additions to paragraph (h) proposed by Ms. Medina Quiroga, together with the amendment to paragraph (h) proposed by Mr. Buergenthal.

65. It was so decided.

66. Part I, as amended, was adopted.

Part II. Issues relating to the implementation of articles 3, 6, 10, 12, 18, 19, 24 and 25 of the Covenant

67. Ms. MEDINA QUIROGA said that article 26 of the Covenant should be included in the heading. There should also be an additional question regarding possible changes in the law limiting the legal capacity of married women.

68. The CHAIRMAN suggested that such a question should be included in paragraph (d).

69. Ms. MEDINA QUIROGA proposed that the phrase "in particular, the changes in the law regarding the legal capacity of married women" should be added at the end of paragraph (d).

70. Ms. EVATT said that paragraph (d) should include a further question in respect of paragraph 92 of the report (CCPR/C/83/Add.1), regarding Act No. 26260 on domestic violence. A number of new programmes in that connection were referred to in paragraphs 93-95, and it was important to learn what resources had actually been allocated to services for women. She understood from other sources that few concrete measures had been taken so far.

71. Mr. LALLAH said that the question raised by Ms. Medina Quiroga was perhaps already covered by paragraph (b).

72. Mr. BRUNI CELLI said, in connection with paragraph (e) concerning paragraphs 138 to 143 of the report (CCPR/C/83/Add.1), that, as it stood, the text implied that it was for Peru to determine whether article 140 of its 1993 Constitution was compatible with the Covenant. He felt that that was a task for the Committee. Paragraphs 138 to 143 of the report were concerned largely with the provisions of the American Convention on Human Rights, the San José Pact. As far as article 6 of the Covenant was concerned, there was no reference to the possible reimposition of the death penalty. Peru might be asked to provide its own interpretation of article 140 of the 1993 Constitution.

73. Mrs. CHANET endorsed the views expressed by Mr. Bruni Celli.

74. Mr. PRADO VALLEJO asked, in connection with paragraph (k), whether there had been any cases in Peru of children being recruited into the army.

75. The CHAIRMAN suggested that paragraph (k) should be amended to ask whether there were any children in the armed forces of Peru.

76. Ms. MENDINA QUIROGA said, in regard to paragraph (l) and the provisions of article 25 of the Covenant, that it would be interesting to know whether the recent campaign in Peru for a referendum on amnesty had been effective.

77. The CHAIRMAN said that a sentence could be added to the paragraph asking whether there had been any change in the requirements for holding a referendum.

78. If he heard no objection, he would take it that the Committee wished to adopt the amendments to paragraph (d) proposed by Ms. Medina Quiroga and Ms. Evatt, the change in paragraph (e) proposed by Mr. Bruni Celli and endorsed by Mrs. Chanet, the addition to paragraph (k) proposed by Mr. Prado Vallejo and the addition to paragraph (l) proposed by Ms. Medina Quiroga.

79. It was so decided.

80. Part II, as amended, was adopted.

81. The list of issues as a whole, as amended, was adopted.

The meeting rose at 1 p.m.